Southern Council of Industrial Workers, United Brotherhood of Carpenters and Joiners of America, AFL–CIO *and* Missoula White Pine Sash Co. Case 19–CC–1870–2

January 29, 1991

DECISION AND ORDER

BY CHAIRMAN STEPHENS AND MEMBERS CRACRAFT AND OVIATT

On February 28, 1990, Administrative Law Judge Clifford H. Anderson issued the attached decision. The Charging Party filed exceptions and a supporting brief, and the Respondent filed an answering brief.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the decision and the record in light of the exceptions[1] and briefs and has decided to affirm the judge's rulings, findings,[2] and conclusions[3] and to adopt the recommended Order.

ORDER

The recommended Order of the administrative law judge is adopted and the complaint is dismissed.

[1] The Charging Party has requested oral argument. The request is denied because the record, exceptions, and briefs adequately present the issues and positions of the parties.

[2] The Charging Party has excepted to some of the judge's credibility findings. The Board's established policy is not to overrule an adminstrative law judge's credibility resolutions unless the clear preponderance of all the relevant evidence convinces us that they are incorrect. *Standard Dry Wall Products*, 91 NLRB 544 (1950), enfd. 188 F.2d 362 (3d Cir. 1951). We have carefully examined the record and find no basis for reversing the findings.

In par. 4; sec. III,A, par. 3; sec. III,B,2,c, par. 5; and sec. III,C,3, par. 4 of his decision, the judge refers to ''July 1988.'' We correct this to ''July 1989.''

[3] We agree with the judge that the record establishes that Huttig's control over the labor relations of Southern and Missoula is sufficient to deny Missoula the protection of Sec. 8(b)(4)(B). Cf. *Los Angeles Newspaper Guild Local 69 (San Francisco Examiner)*, 185 NLRB 303 (1970), enfd. 443 F.2d 1173 (9th Cir. 1971), cert. denied 404 U.S. 1018 (1972). Accordingly, we find it unnecessary to rely on the judge's application of *Teamsters Local 560 (Curtin Matheson Scientific)*, 248 NLRB 1212 (1980), to the facts of this case.

Michael S. Hurtado, Esq., for the General Counsel.
Bernard Jolles and Harlan Bernstein (Jolles, Sokol & Bernstein), of Portland, Oregon, for the Respondent.
Greg R. Tichy, Esq., of Spokane, Washington, for the Charging Party.

DECISION

STATEMENT OF THE CASE

CLIFFORD H. ANDERSON, Administrative Law Judge. I heard this case in trial on October 31 and November 1 and 2, 1989, in Missoula, Montana. Posthearing briefs were submitted on December 7, 1989.

The matter arose as follows. On July 19, 1989, Missoula White Pine Sash Co. (the Charging Party or Missoula) filed a charge docketed as Case 19–CC–1870 against the United Brotherhood of Carpenters and Joiners of America, AFL–CIO (the International). The Charging Party amended its charge on July 28, 1989. On the same date a complaint and notice of hearing was issued by the Regional Director of Region 19 of the National Labor Relations Board (the Board) against the International. On August 15, 1989, the Charging Party filed a second amended charge naming for the first time the Southern Council of Industrial Workers, United Brotherhood of Carpenters and Joiners of America, AFL–CIO (Respondent or the Union) as an additional wrongdoer. On August 16, 1989, the Regional Director for Region 19 issued an amended complaint and notice of hearing adding the Union as a second Respondent.

Answers were submitted by each Respondent and the trial went forward against both. During the trial an all party motion was made and granted: (1) to sever the cases against the two respondents, (2) to withdraw the case against the International, and (3) to further amend the complaint and answer as will be discussed, infra. Accordingly, Case 19–CC–1870 was severed and renumbered with Case 19–CA–1870–1 alleging violations of the Act by the International and Case 19–CC–1870–2 alleging violations of the Act by Respondent. Case 19–CC–1870–1 was then withdrawn by the General Counsel with my approval and the amended complaint allegations respecting Case 19–CA–1870–1 and the International were dismissed. The matter thereafter went forward as captioned above under a single case number, Case 19–CC–1870–2, and against a single Respondent, the Union.

The amended complaint, as further amended at the hearing consistent with the agreement of the parties, alleges and the answer admits that Respondent's agents in July 1988 threatened to picket and picketed the Charging Party's facility in Missoula, Montana, in furtherance of Respondent's economic dispute with Southern Manufacturing Company (Southern) in Rock Hills, South Carolina.

The complaint alleges and the answer denies that Respondent's conduct admitted above violates Section 8(b)(4)(i) and (ii)(B) of the National Labor Relations Act (the Act). All parties agree that the existence of a violation turns entirely on the relationship in fact and law between the Charging Party and Southern.

FINDINGS OF FACT

All parties were given full opportunity to participate at the hearing, to introduce relevant evidence, to call, examine and cross-examine witnesses, to argue orally, and to file posthearing briefs.

On the entire record including helpful briefs from all parties, and from my observation of the witnesses and their demeanor, I make the following[1]

I. JURISDICTION

The Charging Party is a wholly owned subsidiary of Huttig Sash & Door Company (Huttig), a Delaware corporation. The Charging Party has an office and place of business in Missoula, Montana, where it is engaged in the business of operating a frame factory and sawmill producing lumber and

[1] As a result of the pleadings, the stipulations of counsel at trial, and a host of admittedly authentic documents offered into evidence, there were few disputes of fact regarding collateral matters. Where not otherwise noted, the findings are based on the pleadings, the stipulations of counsel, and/or credited documentary or testimonial evidence.

other wood products. The Charging Party at all relevant times has annually enjoyed gross sales in excess of $500,000 and during the same periods has sold and shipped goods from its Montana operations to customers themselves engaged in interstate commerce by other than indirect means of a value in excess of $50,000 annually. The parties agree and I find that the Charging Party is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

II. LABOR ORGANIZATION

Respondent is a labor organization within the meaning of Section 2(5) of the Act.

III. THE ALLEGED UNFAIR LABOR PRACTICE

A. *Background*

Thanks to the laudable efforts of counsel at the trial, the matters in dispute were narrowed to the single issue described below. Thus in effect the parties have stipulated all other aspects of the case and agree that the question of whether or not Respondent has violated the Act turns entirely on the nature of the relationship between Southern and the Charging Party.

The Union has at relevant times represented certain of Southern's employees in Rock Hills, South Carolina. Certain of the Charging Party's employees in Missoula, Montana, are represented by Lumber, Production and Industrial Workers Local 2812 and are covered by a collective-bargaining agreement spanning the relevant period. The Union has not represented nor sought to represent the Charging Party's employees.

The Union in furtherance of an economic dispute and strike against Southern picketed and threatened to picket the Charging Party at its Missoula, Montana facility in July 1988 and continues to assert its right to do so.

The National Labor Relations Act Section 8(b)(i) and (ii)(B) states:

> Section 8(b)(4): It shall be an unfair labor practice for a labor organization or its agents—
>
> (i) to engage in, or to induce or encourage any individual employed by any person engaged in commerce or in an industry affecting commerce to engage in, a strike or a refusal in the course of his employment to use, manufacture, process, transport, or otherwise handle or work on any goods, articles, materials, or commodities or to perform any services; or (ii) to threaten, coerce, or restrain any person engaged in commerce or in an industry affecting commerce, where in either case an object thereof is—
>
> (B) forcing or requiring any person to cease using, selling, handling, transporting, or otherwise dealing in the products of any other producer, processor, or manufacturer, or to cease doing business with any other person. . . . *Provided*, That nothing contained in this clause (B) shall be construed to make unlawful, where not otherwise unlawful, any primary strike or primary picketing . . . .

There is no dispute that Respondent, a labor organization, picketed and threatened to picket the Charging Party with a cease doing business object in the hopes of putting pressure on Southern in furtherance of its economic dispute with it. This conduct admittedly falls within the quoted prohibitions of Section 8(b)(4)(i) and (ii)(B) of the Act, if, and only if, the Charging Party and Southern may be regarded as sufficiently independent in law so that the Charging Party is regarded as a neutral in the dispute between Southern and Respondent. Thus the status of Missoula as a neutral or not determines if the Union's actions against the Charging Party were impermissible secondary activity prohibited by the Act or rather permissible primary conduct specifically defined as not unlawful in the proviso to Section 8(b)(4)(B) of the Act as quoted above.

B. *Is the Charging Party a Neutral in the Union's Dispute with Southern?*

Southern and Missoula are each wholly owned by Huttig and are part of Huttig's nationwide network of manufacturing, assembly, and distribution facilities. In order to evaluate the relationship between Southern and Missoula it is necessary to consider the entire Huttig operation and the relationships between and among its component parts.

1. A basic overview of Huttig[2]

Huttig is a long established building materials corporation with its corporate headquarters in Chesterfield, Missouri, a suburb of St. Louis.[3] Huttig operates a nationwide network of approximately 70 building material wholesale and distribution facilities under its own name and under subsidiary names. Huttig also owns and operates four manufacturing and assembly facilities including the Charging Party and Southern.

Huttig's president and chief executive officer (CEO) at relevant times has been S. P. Wells. A conventional corporate hierarchy exists in Chesterfield for the management of the corporation. Corporate officials and associated staff are located at the Chesterfield headquarters with some exceptions. As will be discussed in greater detail, infra, Huttig's vice president of manufacturing, D. R. Duff, is assigned offices at the Charging Party's facility in Missoula, Montana. Duff is responsible for Huttig's manufacturing division which consists of four operating units: Huttig's two manufacturing plants—Missoula and Southern,[4] the Louisville, Kentucky glazing division and the Fresno, California assembly facility. Huttig owns 100 percent of each of the four entities under Duff's supervision as well as the real property under Southern and Missoula. Southern, Fresno, and Louisville produce products primarily or exclusively for Huttig's distribution centers.

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[2] The basic organizational and historic facts are taken from the corporate filings, historical articles prepared by the Charging Party's agents and offered into evidence by Respondent, and other admittedly authentic documents.

[3] Huttig is in turn wholly owned by its parent, the Crane Company. No contention was made however that Huttig's ownership or control by the Crane Company is significant to resolving the issue in dispute.

[4] The description of Missoula and Southern as the Huttig's two manufacturing facilities is taken from Huttig's August 1988 organizational chart. The four facilities under Duff's supervision were also referred to in the record as manufacturing plants and are apparently the only facilities outside of headquarters which are not wholesale distribution centers.

The Charging Party was originally incorporated in 1920 in Washington State with Huttig as the majority stockholder. Since the 1920's the Charging Party has operated sawmills in the Missoula, Montana area utilizing owned or acquired timber and a frame factory manufacturing window and door frames. In 1966 Huttig purchased all outstanding shares in the Charging Party. In 1971 the Charging Party was formally merged into Huttig and the separate corporation became dormant. The Charging Party's recent operations continue to be the milling and sale of wood products including millwork and dimension lumber. It mills, assembles, and supplies wood products and sash components to the trade, to several of Huttig's distribution centers and to Southern and Louisville[5] for further processing and distribution to other Huttig facilities. Duane Duff in an in-house newspaper article characterized these product relationships as follows:

> The Huttig Sash and Door Company, with the Missoula White Pine Sash Company as its production base is vertically integrated like no other company in the millwork business. For a portion of its sales, the Huttig Sash and Door Company controls the production and sale of some products, from the tree growing in Montana to the assembled completed product ready for installation in the home.

Missoula's Operations Manager since August 1988 has been Robert Blanchard who replaced Duff on his promotion to vice president of manufacturing. At about the same time Terry Plakke, until that time sales manager with Missoula, was promoted to operations manager of Southern.

Insofar as the record reflects, Southern Manufacturing Company was incorporated as a South Carolina corporation in 1945. The corporation was dissolved in 1984 and Southern is now a subsidiary of Huttig. Southern principally assembles windows and doors and manufactures a portion of its components needed for assembly. Approximately 50 to 60 percent of Southern's product components are obtained from Missoula. Southern's operations manager is Terry Plakke.

2. Branch coordination and control by Huttig

a. *Headquarters role in controlling manufacturing branch operations*[6]

The highest onsite official at each Huttig branch is the Operations Manager who has general responsibility for day-to-day operations. Huttig has established policies which provide branch reporting responsibilities, operational limits and, in some cases, require predecision corporate approval or postdecision clearance respecting certain actions. Corporatewide plans and policies are in some cases mandatory and in other cases applicable within the discretion of the individual branch operations manager. CEO Wells clearly is a hands-on manager who regularly monitors, questions and comments on the affairs of the manufacturing branches whenever he feels it appropriate. Thus, for example, the record contains memoranda from Wells to Missoula concerning the reasons for an unusually small volume of product that had been shipped to a particular customer, and an exchange between Wells and Southern respecting credit and return policies.

Missoula has its own bank account which automatically passes on funds over a set amount to a Huttig account and draws from that account if balances fall below a set level. Missoula has its own bookkeeping system although it regularly reports to the corporate level respecting its financial condition and outlook. Missoula issues represented employee paychecks. Salaried and nonrepresented employees receive Huttig checks. Capital expenditures above $2000 require corporate approval, other expenditures such as for repairs do not. Huttig maintains a common insurance carrier for workers compensation and other types of insurance.

Manufacturing operations managers have authority to hire staff but must obtain approval for initial salary levels of nonrepresented employees. General guidelines are maintained for salary increases. The corporate president and chief executive officer, Stuart Wells, approves all salaried employee raises on an individual basis and has made it clear he does not intend to easily approve increases beyond set limits. Huttig has a corporatewide profit-sharing plan for all nonrepresented employees and provides insurance and pension plans for hourly and salaried employees. Missoula's represented employees' wages and benefits are established in bargaining and are not in common with other Huttig branches.

Huttig has corporate policies respecting various aspects of personnel relations including drug and alcohol, financial conflict of interest, safety equipment, jury duty, military service, funeral leave, holidays, and other matters. Duff testified that many of the policies and directives issuing from corporate headquarters did not apply to Missoula because: (1) Missoula had existing policies and practices which were in place before headquarters directives suggested implementation of similar plans, (2) the corporate policies were often intended to apply to the distribution centers and not the manufacturers, and (3) in some cases Duff had secured the specific permission of Chief Executive Officer Wells to disregard particular policies.

Counsel for Respondent argued that Duff and Missoula Operations Manager Robert Blanchard consistently overstated the independence of Missoula and Southern and understated the control exercised by Huttig over its units. Counsel for Respondent noted that Duff's and Blanchard's and other Huttig employees' affidavits consistently overstated Missoula's and Southern's independence even when compared to their testimony under cross-examination at trial. Respondent therefore argues that Duff's testimony discounting the applicability of the various written memos, directives, and policy statements to Missoula and Southern should itself be discounted and discredited. The General Counsel and the Charging Party disagree.

I have considered this matter carefully with additional attention given to the demeanor of Duff and Blanchard. I am convinced that, although Duff and Blanchard did not willfully misspeak respecting the independence of Missoula's and Southern's operations from Huttig's corporate supervision—supervision which included Duff after his promotion,

[5] At the Huttig Manager's meeting in August 1989 Duff reported:

> Due to the Union disruption, we were unable to get our first shipment of TDL parts to Southern and Louisville in July; however, they did go out the first part of August.

[6] Duff's assumption of the position of Missoula resident vice president of manufacturing in August 1988 altered the nature and extent of direct contact and control of the manufacturing locations by headquarters staff. His role as corporate vice president of manufacturing is discussed separately, infra.

they consistently shaped their testimony in a manner calculated to support a finding of independence on the part of Missoula and Southern. I do not discredit this testimony so much as view it with circumspection finding the testimony puts circumstances in a view consciously most favorable to the Charging Party's position in the case.[7]

Collective bargaining is undertaken at the branch level with headquarters kept informed of circumstances and intentions. Thus in the 1986 negotiations at Missoula, Operations Manager Duff kept CEO Wells current with circumstances at Missoula by sending copies of union literature, the current agreement, and proposed changes management would seek in bargaining. Duff's transmission letter to Wells accompanying the contract proposals noted:

> Please review these [contract] changes and let us know if you have any suggestions. I would like to discuss this matter with you in detail during your next visit to Missoula.

Duff had no recollection of discussing with Wells the bargaining in that year although Wells did visit the Missoula facility from time to time. Wells did not testify at the trial. Having considered this aspect of Duff's testimony given the arguments noted, supra, and Duff's demeanor, I do not credit Duff's testimony that he did not follow through on his correspondence with Stuart. Rather I specifically find that Duff did in fact discuss the matter with Wells at some time during the prenegotiation period.

Duff in July 1987 sent Wells a letter and attachments with the following text:

> Accompanying this letter you will find a copy of ''union propaganda'' being distributed to our employees. I would request that you read this information so you can get a feel for the type of negotiations we face in 1988.
>
> As I said in the past, I feel the 1988 negotiations will be more difficult than 1986.

It is clear that Wells keeps informed and is active in labor relations matters in the manufacturing division. As noted supra, I find Duff spoke to him about such matters. Further, during Southern's strike, Wells granted an interview with the press in which he spoke knowledgeably and authoritatively respecting Southern's specific immediate plans and intentions in dealing with the strike.

Missoula and Southern retain their own labor counsel. Missoula has for many years been represented in negotiations by local counsel and has its own contract fringe benefit programs which are administered locally. The numerous corporate documents in evidence do not suggest that headquarters staff has been intrusive in controlling Missoula collective bargaining.

b. *Vice President Duff's role in manufacturing branch operations*

In August 1988 Duff was promoted from operations manager of Missoula to the newly created position of vice president of manufacturing. Also receiving promotions at that time were Terry Plakke—from Missoula sales manager to Southern operations manager, and Robert Blanchard—from Missoula controller to Missoula operations manager. This series of promotions was part of the changes in the organization and extent of supervision of the four facilities in the manufacturing division. Whereas operations managers reported to Stuart Wells prior to the creation of the new vice presidency, afterwards operations managers reported to the Missoula-based Duff who in turn reported to Wells. The new organizational and reporting structure was perhaps more easily put into practice by the fact that coincident with its implementation, new operations managers at Missoula and Southern—who had in their previous positions reported to Mr. Duff as their operations manager—took over those facilities.

Duff testified that at the time he was offered his current position he declined to move to headquarters and was therefore allowed to serve as vice president of manufacturing from an office in the Missoula facility. His position involves review of financial and production records, expenditure requests, payroll action forms, and other records of the four facilities under his supervision. For accounting purposes, Duff's remuneration and expenses are allocated to the four facilities as follows: Missoula–40 percent, Southern—25 percent, Fresno—25 percent, and Louisville—10 percent. Missoula supplies space and support staff. Duff testified he spends about 50 percent of his time traveling to the three facilities other than Missoula that he supervises. He testified he tries to get to each facility once a month and to spend a week per visit. Considering the cost allocation formula noted above as a true representation of Duff's site specific supervision and noting the percentage of his time traveling to the other three facilities, it is possible to determine that Duff spends approximately 50 percent of his time away from Missoula supervising the other three facilities, spends 33 percent of his time supervising Missoula respecting site specific matters, and spends 17 percent of his time at Missoula involved in more general duties not specifically related only to the Missoula facility.

Duff testified that he allows the operations managers under his supervision substantial freedom to manage facility affairs consistent with corporate policies and financial profitability. Thus for example, Duff testified that, other than for certain matters discussed below, operations managers do not submit bargaining proposals to him or obtain approval for bargaining proposals or agreements. Duff testified that there were some industrial relations matters he was involved with in 1988 at Missoula after his promotion, but that they were of a transitional nature and resulted from his familiarity with prepromotion events and circumstances. Duff attended the first Missoula negotiation session for the September 1988 contract. He also attended two Rock Hill negotiation sessions at the Southern operations managers' request during his first year as vice president of manufacturing. Duff also participated in a grievance meeting in March 1989 at Missoula which evolved from a grievance filed by the labor organization representing Missoula employees at a time when Duff was present in the office, but operations manager Blanchard was out of town. Duff testified that although he regularly meets with the Operations Managers of both Southern and Missoula and is often at their facilities, he gives each branch substantial freedom to act on its own.

[7] See further discussion of Duff's credibility, infra.

During the strike at Southern, Duff traveled to the facility, remained through the main period of the strike, was active in monitoring the situation from management's perspective, and filed an affidavit in a court action concerning the strike. Duff was the first management official notified of the events at Missoula which underlay this action and discussed the matter with the Union representing Missoula's employees.

In other areas of personnel and labor relations, Duff has sent memos to the operations managers under his supervision such as an article on sexual harassment in which he instructed: ''Please read the article and make sure your policies comply to the suggestions made.'' So, too, facility management and their professional consultants and retainers send Duff memoranda relevant to such policies as a drug-free workplace.

The General Counsel and the Charging Party argue that Duff's testimony corroborated by Blanchard shows the autonomous operation of the facilities under Duff's supervision. In an argument similar to that described above, Respondent challenges Duff's and Blanchard's credibility. Thus argues Respondent, these witnesses' affidavits given in the investigation of the underlying charge are blatantly overreaching and the testimony concerning the relative independence of the operations managers is simply not believable. Rather, argues Respondent, the documents and the evident pattern of close supervision by Duff, corporate headquarters, and Wells, which is fairly inferable from them should be noted and relied on to find actual divisional and corporate control over labor relations at Missoula and Southern.

Duff testified that he has the authority to hire and fire operations managers within his division without approval from higher authority. The Southern and Missoula operations managers were promoted to their present positions from positions under Duff as Missoula operations managers. Duff frequently visits the three ''away'' facilities under his supervision and his office is physically within Missoula's offices. I observed Duff to be a confident direct individual who would not likely be diffident in dealing with his subordinates. Duff has been at the Missoula facility for some time and had been its operations manager for a period of years. I conclude from Duff's testimony and his demeanor generally that he has been an active, informed operations manager with an understanding of corporate practice and policy beyond Missoula.

Considering these factors as well as the documents in evidence, the record as a whole, and the demeanor of the witnesses, I am in agreement with Respondent that Duff as vice president of manufacturing was more heavily involved in labor relations at Missoula and Southern than a facile reading of his testimony and Blanchard's would indicate. Duff testified that he believed it was necessary for him to be at Southern during the strike and that he took an active role in monitoring the situation. I simply cannot believe his interest and activities were so circumscribed. As noted, supra, Wells was active in the matter. So, too, at Missoula I do not accept the asserted proposition that Duff was simply concluding business he was familiar with at the beginning of his term as vice president of manufacturing. Duff's interest in contract language involving stranger picketing at Missoula and his role in the grievance concerning a supervisor he had ''brought along'' indicate to me he was keeping his hand in labor relations at Missoula to a substantial degree. His memo respecting sexual harassment further convinces me that he used his position to control labor relations at his branches. This finding is further buttressed by Duff's actions regarding the Charlotte strike replacements as is discussed, infra.

c. *Branch coordination and interrelationships*

As noted briefly, supra, Missoula mills and manufactures products for non-Huttig customers, Huttig distribution centers, and Southern. Southern obtains 50 to 60 percent of its components from Missoula and sends its products to Huttig's distribution centers. Other than the promotion of Plakke and Duff from Missoula, no cross branch transfers or promotions are evident.

Huttig maintains and distributes in-house corporate directories which contain the names, addresses, and phone numbers of branches and officials including Southern and Missoula. A Huttig newsletter is distributed with news from various branches including Southern and Missoula.

Pursuant to corporate policy, surplus equipment at each branch is offered to other branches at the cost of transportation. Under this policy surplus equipment has been transferred from Southern to Missoula, Missoula to Southern, Missoula to Fresno, and Southern to Louisville. Other branches also have sent and received equipment under this policy. In each case only the cost of transport was charged the receiving branch.

Semiannual meetings of all branch managers and corporate officials are held. At each meeting reports are given by Missoula and Southern officials to the assembled managers and corporate officialdom. These reports have included commentary on upcoming labor negotiations with predictions respecting difficulty and outcome, reports on strikes and the operation of the facility during strikes. On one occasion Duff as operations manger of Missoula described a guard service used at Missoula during a strike and recommended their services to other branches during ''future strikes.''

During the strike and picketing at Southern in July 1988, several salaried and hourly employees from Huttig's Charlotte facility were assigned to and worked at Southern behind the picket line. At the following nationwide branch manager meeting, Duff, in remarks to Chief Executive Officer Wells, corporate officials, and assembled branch managers, noted the Charlotte branch learned of the strike at Southern and, with Duff's and Southern Operations Manager Plakke's approval, ''immediately sent employees up to help.'' Duff testified that at the branch manager meeting he had Plakke, in the presence of the other branch managers, thank the Charlotte branch manager for his help. Duff also testified that both he and Wells approved Charlotte's action and that Huttig appreciated the ''good gesture.'' Duff conceded under cross-examination that at least ''to a limited degree'' his actions at the meeting would encourage Huttig's operations managers to offer strike-breaking assistance to other Huttig facilities in the event of a future strike.

C. *Analysis and Conclusions*

1. The basic law

Southern and Missoula are each wholly owned by Huttig and are therefore corporate subsidiaries. The standard for considering corporate subsidiaries as independent entities under Section 8(b)(4)(B) of the Act was established in *Los Angeles Newspaper Guild Local 69 (San Francisco Exam-*

iner), 185 NLRB 303, 304 (1970), enfd. 443 F.2d 1173 (1971), cert. denied 404 U.S. 1018 (1972). *Hearst* held that if neither the subsidiaries nor the parent corporation exercises actual control over the labor relations of the other, then the separate subsidiaries are entitled to protection under Section 8(b)(4)(B) of the Act.

Later decisions have clarified elements of the doctrine. Thus financial reporting controls are regarded as aspects of potential control rather than actual control. *Teamsters Local 616 (Southwest Forest Industries)*, 203 NLRB 645, 646 (1973). So too, the presence of higher management officials in subsidiary labor negotiations or other local labor matters is not necessarily conclusive of the issue of actual control where the corporate official's role is simply advisory and final authority resides at the subsidiary level. *Teamsters Local 391 (Vulcan Materials)*, 208 NLRB 540 (1974).

Not all corporate subsidiary cases turn purely on a *Hearst* analysis, however. Neutrality as a concept under Section 8(b)(4)(B) of the Act has aspects beyond corporate structure or control. A substantial recitation of the evolution of the question of neutrality under the secondary boycott provisions of the Act is set forth in *Teamsters Local 560 (Curtin Matheson Scientific)*, 248 NLRB 1212 (1980). Noting the difficult and sometimes seemingly arbitrary process of drawing a line between an employer involved in a dispute and a neutral employer, the Board looked to the concerns expressed by Congress. The Board noted at 1213:

> Two statements by Senator Taft have been taken to summarize the legislative history of Section 8(b)(4) with respect to what constitutes a neutral employer[3] or, as the Act now reads, ''person.''
>
> > This provision makes it unlawful to resort to a secondary boycott to injure the business of a third person who is ''wholly unconcerned'' in the disagreement between an employer and his employees. [Emphasis supplied.] [93 Cong. Rec. 4198 (1947), reprinted in II Leg. Hist. 1106 (NLRA, 1947)].
>
> Later, in a post-legislative reflection on the purpose of the provision, Senator Taft stated:
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> > The secondary boycott ban is merely intended to prevent a union from injuring a third person who is not involved in any way in the dispute or strike. [I]t is not intended to apply to a case where the third party is, in effect, in cahoots with or acting as part of the primary employer. [95 Cong. Rec. 8709 (1949).]
>
> Out of Senator Taft's ''wholly unconcerned'' statement, a Federal district court,[4] and then the Board,[5] devised what came to be called the ''ally'' doctrine. It will suffice here to say that this doctrine developed into two branches, one involving cases where an employer's neutrality was alleged to be compromised by his performance of ''struck work,'' and another involving cases where neutrality was contested on the ground that the boycotted employer and the primary employer were a single employer or enterprise.[6] As the cases in which one branch was applied usually did not involve the other branch, each branch of the doctrine developed its own, independent set of rules. Even within one branch, decisions sometimes focused on one or more narrow aspects of the neutrality problem. This occurred in the *Hearst* cases[7] . . . where the Board focused on a refinement of the single-employer problem: whether operating divisions of a single corporation technically could be considered separate ''persons'' within the meaning of Section 8(b)(4)(B).[8]

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[3] See *Local 282, International Brotherhood of Teamsters, Chauffeurs, Warehousemen & Helpers of America (Acme Concrete & Supply Corp.)*, 137 NLRB 1321, 1324 (1962).

[4] *Douds v. Metropolitan Federation of Architects, Engineers, Chemists & Technicians, Local 231* [75 F.Supp. 672 (S.D.N.Y. 1948)].

[5] *National Union of Marine Cooks and Stewards, and its Portland Local, CIO, et al. (Irwin-Lyons Lumber Company)*, 87 NLRB 54, 56, 83–84 (1949).

[6] See, generally, Levin, ''Wholly Unconcerned': The Scope and Meaning of the Ally Doctrine Under Section 8(b)(4) of the NLRA.'' 119 U. Pa. L. Rev. 283 (1970); Sciacchitano, ''The Single Employer Doctrine as Applied to Section 8(b)(4) of the National Labor Relations Act,'' 28 Cath. U. L. Rev. 555 (1979). The ''struck work'' branch has also been referred to, by itself, as the ''ally'' doctrine, and the other branch as the ''single-employer'' doctrine.

[7] *Los Angeles Newspaper Guild, Local 69, et. al. (San Francisco Examiner, Division of the Hearst Corporation, et. al.)*, 185 NLRB 303 (1970), enfd. 443 F.2d 1173 (9th Cir. 1971), cert. denied 404 U.S. 1018; *American Federation of Television and Radio Artists Washington-Baltimore Local, AFL–CIO (Baltimore News American Division, The Hearst Corporation)*, 185 NLRB 593 (1970), enfd. 462 F.2d 889 (D.C. Cir. 1972).

[8] The *Hearst* cases were the culmination of a line of cases involving one aspect of the single-employer or single-enterprise branch of the ''ally'' doctrine: whether common ownership plus potential common control of the operation of the primary employer and the alleged neutral employer caused loss of neutrality. The Board had come to the view that actual common control, not merely potential control, of their day-to-day operations of labor relations, was a necessary predicate for such a finding. *Los Angeles Newspaper Guild Local 69*, 185 NLRB at 304. This conclusion reflected the realization that potential control is inherent in common ownership and, as a basis for finding loss of neutrality, would be tantamount to basing it on common ownership alone. See *J. G. Roy & Sons Company v. NLRB*, 251 F.2d 771, 773–774 (1st Cir. 1958). This the Board, at least after *J. G. Roy*, supra, was unwilling to do. But these cases did not involve any other factors, beyond common ownership and potential control, that might demonstrate a unit of interest between the primary employer and the alleged neutral concerning the labor dispute. The *Hearst* cases held that the common control doctrine applied even to operating divisions of the same corporation.

Having noted the parallel ''branches'' described above, the Board in *Curtin Matheson Scientific* found narrow isolated analysis of technical questions of separateness were artificial and restricting. Rather the Board indicated that all relevant factors bearing on the issue of neutrality ought to be considered on a case-by-case considering both parts of the ''ally'' doctrine. The Board noted at 1214:

> The Board and the courts thus stressed that the branches of the ''ally'' doctrine are not ato be permitted to take on lives of their own and become encrusted with nice rules and exceptions. They are merely tools that must be used to reflect the full range of congressional policies underlying the primary-secondary dichotomy.

It is appropriate therefore to apply both the *Hearst* and the *Curtin Matheson* analysis to the instant case.

2. The *Hearst* analysis

Looking to the relationship between Huttig and Southern and Missoula for purposes of determining if the parent exer-

cises actual or active as opposed to potential control of labor relations of the two subsidiaries, it is clear and I find that the degree of actual control exercised by headquarters herein is not sufficient under the cases to deny Missoula the protection of Section 8(b)(4)(B) of the Act where the primary dispute is with Southern. Cases such as *Electrical Workers IBEW Local 2208 (Simplex Wire)*, 285 NLRB 834 (1987), and *Commercial Workers Local 1439 (Price Enterprises)*, 271 NLRB 754 (1984), teach that the degree of control exercised by headquarters herein, as opposed to Vice President Duff's control which is discussed, infra, on the facts of this case is insufficient to shelter Respondent's conduct.

The *Hearst* issue is not nearly so clear when the degree of divisional control exercised through the office of Vice President Duff is added to the scales. Hutting as described above is primarily a building products distribution entity. Its manufacturing facilities are of their very nature different entities in size and function from the product distribution centers. The assignment of the vice president of manufacturing, not to corporate headquarters but rather to one of the two main facilities in his division, a well as Duff's history as former head the Missoula operations and operations manager over the current operations managers of Southern and Missoula give the case a special context which renders the case dissimilar from traditional *Hearst* situations involving traditional organizational and supervisory structures. My credibility resolutions based in part on demeanor, as note above, that headquarters and Duff were much more active in controlling labor relations at Southern and Missoula than Duff's testimony indicated further clouds the issue.

The cases make it clear that where two subsidiaries' labor relations are actively controlled by a common entity, the subdsidiaries are not separate persons entitled to the protection of Section 8(b)(4)(B) of the Act. In the instant case Vice President Duff admittedly was physically present at bargaining sessions at each facility, at a grievance meeting in Missoula and active in monitoring the strike at Southern. I have in essence discredited Duff's denials that his role in those matters was simply advisory based on his longstanding familiarity with the issues and general expertise at a time when the new operations managers were getting their feet on the ground. Duff was, of course, more experienced than the two new operations managers at the beginning of their respective terms of office. I find however that his role in labor relations and indeed in supervision and control over the facilities in the division generally was active and ongoing. Duff, isolated from other corporate hierarchy members in his Missoula office, had the experience, the time and the demonstrated interest to keep abreast of labor relations at both Southern and Missoula. His interest in the grivevance and stranger picketing issue at Missoula, the strike at Southern and, importantly, as discussed below, his actions respecting the strike replacements from a Huttig product distribution center used at Southern demonstrate his ongoing active role in branch labor relations at Southern and Missoula.

Considering all the above, I find, under a pure *Hearst* analysis, that Huttig primarily through Duff exercises sufficient control over the actual labor relations of Southern and Missoula so as to deny Missoula the protection of Section 8(b)(4)(B) of the Act where the Union's dispute is with Southern. Thus, were it necessary to do so, I would find no violation of the Act and would dismiss the complaint based on this analysis alone. For the reasons set forth below, however, I do not find this involves only a pure *Hearst* case, but rather find it also presents additional factors for consideration.

3. The *Teamsters Local 560 (Curtin Matheson Scientific)* analysis

The Union relies heavily on the Board's decision in *Teamsters Local 560 (Curtin Matheson Scientific)*, 248 NLRB 1212 (1980), which has been extensively quoted and discussed, supra. The General Counsel and the Charging Party seek to distinguish the analysis and holding therein because in *Curtin Matheson* the Board found a common warehousing function which allowed the branches of the parent to perform struck work. The General Counsel notes that *Curtin Matheson* was distinguished on such a basis by Judge Wacknov in *Commercial Workers Local 1439 (Price Enterprises)*, supra.

It is clear that the common warehousing aspect of *Curtin Matheson* is not present here. I find however that the broader aspect of alliance, i.e., that the Huttig branches would and did function as allies in a labor dispute which was present and indeed controlling in *Curtin Matheson* is also present here and commands the same result. In the instant case it is not a common warehousing function which unites the subsidiaries, but rather a corporate policy apparently spontaneously initiated in the labor dispute at Southern and thereafter described, praised and encouraged as corporate policy at a nationwide branch managers meeting with the highest corporate officials in attendance. The policy encourages branch managers not involved in a labor dispute to offer assistance to other branches suffering strikes by assigning or transferring regular branch employees to struck branches for use as strike replacements assigned to work behind the striking employees' picket lines.

It may not be challenged that the assigning of one entity's employees to another entity for service at the struck facility as replacement employees during a strike is rendering assistance during a labor dispute. By making common cause with the struck employer, the employer supplying strike breakers is entering into the closest possible alliance with the struck employer against the striking employees and their collective-bargaining representative. Such fundamental assistance is the simplest and clearest example of the linkage discussed in the ''ally doctrine'' cases noted, supra.

It was undisputed that Huttig's Charlotte branch manager, after gaining the approval of Vice President of Manufacturing Duff and Southern Operations Manager Plakke, supplied Charlotte employees to work behind the picket line during the strike at Southern in July 1988. It is also undisputed that at the national branch managers meeting, in the presence of Chief Executive Officer Wells, Duff had Plakke thank Huttig's Charlotte branch manager for the assistance provided during the strike. Such a course of conduct rises to a level of a corporate policy.[8]

Given my finding that the supplying of strike replacement workers by one branch to another during a strike was at the very least adopted and encouraged by Huttig corporate officials, I further find that all branches of Huttig by that policy

[8] Indeed Duff admitted the circumstances at the meeting could encourage Huttig branch managers to offer similar support to other branches during strikers in the future.

became allies of Southern within the meaning of *Curtin Matheson*, supra. Accordingly, I find that Missoula, as one branch of Huttig, is such an ally and therefore is not a neutral or wholly unconcerned respecting the dispute at Southern. Therefore, I find that Missoula is not a separate person within the meaning of Section 8(b)(4)(B) of the Act and that the Union did not violate that provision of the Act by picketing or threatening to picket Missoula in furtherance of its dispute with Southern. Having found that Respondent did not violate the Act as alleged in the complaint, I shall recommend that the complaint be dismissed in its entirety.

CONCLUSIONS OF LAW

1. The Charging Party is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

2. Respondent is a labor organization within the meaning of Section 2(5) of the Act.

3. Respondent did not violate the Act as alleged in the complaint.

Based on these findings of fact and conclusions of law and on the entire record, I issue the following recommended[9]

ORDER

The complaint is dismissed.

[9] If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.